IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.791 of 2007

Muniyandi .. Petitioner

Vs

1. State of Tamilnadu,
   rep. by Secretary to Govt.,
   Prohibition & Excise Department,
   St. George Fort, Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the respondents herein to produce the petitoner Muniyandi T.P.D.A.No.7043 now confined in Central Prison, Puzhal, Chennai before this Honourable Court and set him at liberty forthwith from detention and call for the records pertaining to the passing of the order of detention by the 2nd respondent herein detention order Memo.No.76/BDFGISSV/2007 dated 27.02.2007 and quash the same.

For Petitioner : Mr.S.Govindarajan
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

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O R D E R

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 27.2.2007 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest

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Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short "the Act") branding him as a "Goonda".

2. The order of detention dated 27.2.2007 was passed on the basis of ground case in Crime No.291 of 2007 for alleged commission of offences under Sections 341, 336, 427 and 506(ii) r/w 397 of I.P.C. The allegation against the detenu was that on 6.2.2007 at about 6.30 hours, when one Selvaraj was proceeding to Pozhichalur to take tea and while he was walking near Pammal Municipality Ambedkar statue, the petitioner wrongfully restrained Selvaraj at the point of knife and asked him what was in his pocket. The petitioner voluntarily inserted his hand into the shirt pocket of Selvaraj and took away Rs.220/- and also snatched the wrist watch of Selvaraj. Noticing that the detenu was escaping, Selvaraj raised hue and cry. The public nearby tried to apprehend him on the spot, but the detenu picked up biscuit bottles from the nearby shop and hurled the same against them by uttering filthy words. The bottles fell down on the road, broken into pieces and the pieces scattered all over the road. The public ran to safer places out of fear of danger to their lives and properties, and thus the detenu created terror and panic at the spot. In the melee, the detenu tried to escape from the spot. However, with the help of public, the detenu was apprehended at the spot by the complainant.

3. The second respondent, taking note of the above case as a ground case and finding that there are two adverse cases pending against the detenu in Crime No.1053 of 2005 on the file of S6 Shankar Nagar Police Station and Crime No.121 of 2007 on the file of P6 Kodungaiyur Police Station for the offence punishable under Section 380 IPC and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The main contention of the learned counsel for the petitioner/detenu assailing the order of detention is that while both the adverse cases referred to in the grounds of detention relate to the offence punishable under Section 380 I.P.C. (theft cases), the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

5. We have heard learned Additional Public Prosecutor on the above said point.

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6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982, as per which, the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of these activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order".

7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 380 I.P.C. and the ground case relates to the offence of robbery punishable under Sections 341, 336, 427 and 506(ii) r/w 397 I.P.C. and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Hence, applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention dated 27.2.2007. Accordingly, the order of detention is set aside and the Habeas Corpus Petition is

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allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1. The Secretary to Government,
   State of Tamilnadu,
   Prohibition & Excise Department,
   Fort St. George, Chennai 600009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai-8.

3. The Superintendent,
   Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government
Public (Law and order)
Fort Saint George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

1 cc to M/s. S. Govindarajan, Advocate, SR. 58322

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